IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Cr.Appeal 109 of 2000
Decided on 12. 07 . 2007

State of H P .....Appellant

Versus

Shiv Dutt ..... Respondent

Coram:

The Hon'ble Mr. Justice Surinder Singh.J.

Whether approved for reporting ?[1] *.No*

For the appellant : **Mr. C B Singh, Deputy Advocate General.**

For the Respondent **Mr. Raman Sethi, Advocate.**

Surinder Singh, J.(oral)

The respondent was put on trial before the Additional Chief Judicial Magistrate, Dehra, District Kangra (HP), under Section 61(1)(a) of the Punjab Excise act, 1914 (as applicable to the State of Himachal Pradesh), for allegedly having in his possession five bottles of XXX Rum.

After complete trial, the learned lower court acquitted the respondent on the ground of non compliance of Section 100(4) Cr.P.C. and the

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ? yes.***

officials witnesses not relied upon due to material contradictions.

The impugned judgment of acquittal was assailed in appeal on the ground that the trial court did not appreciate the evidence of the prosecution in right perspective.

I have heard Sh. C B Singh, learned Deputy Advocate General and Sh. Raman Sethi, learned counsel for the respondent-accused.

Learned Deputy Advocate General has taken me through the evidence on record and submitted that the official witnesses had inspired confidence and judgment of acquittal can be converted into conviction.

Shri Raman Sethi, learned counsel for the respondent-accused, while supporting the impugned judgment, has ventilated that the prosecution could not prove the case beyond a reasonable doubt against the respondent and further that the link evidence is also missing, therefore, the appeal merits dismissal.

I have given my thoughtful consideration to the rival contentions, raised by the learned counsel for the parties.

In brief, the case as set out by the prosecution is that on 16.2.1992, police party headed by SI Sucha Singh was on patrolling duty, when they reached near Haripur they saw the respondent holding a bag in his right hand. They got suspicious and on search they detected five bottles of XXX Rum. Five nips were taken as sample and sealed them with seal impression "SS". Seal was handed over to LHC Jagdish Chand. Case property was taken into possession vide recovery memo Ex.PW-3/A. Ruqua Ex.4/A was sent for registration of the case along with the case property. Boor Singh LHC (PW-1) had taken the samples to Chemical Examiner Kandaghat for its analysis and on receipt of the Chemical Examiner Report Ex.PW-4/B, case was presented in the court for its trial. The case of the respondent was denial simpliciter.

On re-appraising the evidence on record whatever the trial court had found, in addition to that it has also come to my notice that PW-1 LHC Boor Singh has stated that the samples in question were entrusted to him by Munshi Gian Singh, who was not examined. Further he has stated that the samples, which were entrusted to him in this case bore the seal impression of "S" instead

of "SS", as initially stated in the prosecution case. The witness has further stated that the samples which were handed over to him on 27.2.1992, he deposited the same with the Chemical Examiner, Kandaghat on 28.2.1992; where these samples were kept during night is not known. Further, from the spot the case property was allegedly sent through HHG Kewal Singh as stated in the *Rukka* but he was not examined. According to PW-2 Gian Chand ASI the case property was sent for chemical examination on 27.2.1992 through LHC Boor Singh but where this case property was kept w.e.f. 16.2.1992 to 27.2.1992 is not spelt out and this witness has not stated that as long as the property remained with him the same was not tampered with by him or any one else. The seal of the case property was entrusted to Jagdish Chand (PW-3), who did not produce the seal. PW-3 Jagdish Chand also did not disclose that from the recovered quantity, samples of liquor were taken separately. He has simply stated that five bottles of XXX Rum were found, which were sealed. There is nothing on record to show that the bag in question was having any article therein to connect the accused with the commission of the alleged offence. Even his

presence on the spot is disputed, as the recovery memo did not bear his signatures. Culmination of the above circumstances, does not inspire confidence into the statements of the official witnesses. When in such type of cases, the link evidence is missing, case of the prosecution cannot be said to be have been proved beyond the shadow of reasonable doubt. The reasoning given by the trial court for acquitting the respondent is based upon the record, which cannot be said to be perverse. Therefore, the appeal merits dismissal, which is accordingly dismissed. The respondent is discharged of the bail bonds, entered upon by him during the proceedings of the trial at any stage.

July 12, 2007 (Surinder Singh),J.
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